

**PUBLIC MATTER
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THE STATE BAR COURT
HEARING DEPARTMENT - SAN FRANCISCO

In the Matter of) Case Nos. 04-O-14278 [07-O-14039]
)
FRANK EPSTEIN,)
No. 97325,) NOTICE OF DISCIPLINARY CHARGES
)
<u>A Member of the State Bar.</u>)

NOTICE - FAILURE TO RESPOND!

IF YOU FAIL TO FILE AN ANSWER TO THIS NOTICE WITHIN THE TIME ALLOWED BY STATE BAR RULES, INCLUDING EXTENSIONS, OR IF YOU FAIL TO APPEAR AT THE STATE BAR COURT TRIAL, (1) YOUR DEFAULT SHALL BE ENTERED, (2) YOU SHALL BE ENROLLED AS AN INACTIVE MEMBER OF THE STATE BAR AND WILL NOT BE PERMITTED TO PRACTICE LAW UNLESS THE DEFAULT IS SET ASIDE ON MOTION TIMELY MADE UNDER THE RULES OF PROCEDURE OF THE STATE BAR, (3) YOU SHALL NOT BE PERMITTED TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS YOUR DEFAULT IS SET ASIDE, AND (4) YOU SHALL BE SUBJECT TO ADDITIONAL DISCIPLINE.

STATE BAR RULES REQUIRE YOU TO FILE YOUR WRITTEN RESPONSE TO THIS NOTICE WITHIN TWENTY DAYS AFTER SERVICE.

IF YOUR DEFAULT IS ENTERED AND THE DISCIPLINE IMPOSED BY THE SUPREME COURT IN THIS PROCEEDING INCLUDES A PERIOD OF ACTUAL SUSPENSION, YOU WILL REMAIN SUSPENDED FROM THE PRACTICE OF LAW FOR AT LEAST THE PERIOD OF TIME SPECIFIED BY THE SUPREME COURT. IN ADDITION, THE ACTUAL SUSPENSION WILL CONTINUE UNTIL YOU HAVE REQUESTED, AND THE STATE

BAR COURT HAS GRANTED, A MOTION FOR TERMINATION OF THE ACTUAL SUSPENSION. AS A CONDITION FOR TERMINATING THE ACTUAL SUSPENSION, THE STATE BAR COURT MAY PLACE YOU ON PROBATION AND REQUIRE YOU TO COMPLY WITH SUCH CONDITIONS OF PROBATION AS THE STATE BAR COURT DEEMS APPROPRIATE. SEE RULE 205, RULES OF PROCEDURE FOR STATE BAR COURT PROCEEDINGS.

The State Bar of California alleges:

JURISDICTION

1. Frank Epstein ("respondent") was admitted to the practice of law in the State of California on May 11, 1981, was a member at all times pertinent to these charges, and is currently a member of the State Bar of California

COUNT ONE

Case No.04-O-14278
Rules of Professional Conduct, rule 3-110(A)
[Failure to Perform with Competence]

2. Respondent wilfully violated Rules of Professional Conduct, rule 3-110(A), by intentionally, recklessly, or repeatedly failing to perform legal services with competence, as follows:

3. In or about January 2002, Anthony Kearney employed respondent to represent him in a divorce proceeding entitled *Kearney v. Kearney*, Solano County Superior Court, case number FFL064541. On January 30, 2003, the Court granted the dissolution. After the hearing, respondent was required to prepare and submit the Judgment and other orders to the court so that the divorce could be finalized. Subsequently, respondent failed to prepare the necessary papers to finalize the divorce. On August 9, 2004, Mr. Kearny filed a complaint with the State Bar. In response to correspondence from the State Bar, respondent stated that he submitted the Judgment and other orders to the Court, but they were returned due to errors. Respondent admitted that he did not resubmit the correct Judgment and other orders in a timely fashion.

1 4. On March 21, 2005, respondent submitted the incorrect papers to the Court,
2 and they were returned. Respondent resubmitted the Judgment, but on May 5, 2005,
3 the Court rejected it because it was incomplete. On June 9, 2005, after respondent
4 submitted a revised Judgment, the court entered judgment. On August 15, 2005,
5 respondent filed a Findings and Order After Hearing, but included incorrect figures.
6 On August 22, 2005, after respondent corrected the figures, the Court entered
7 Findings and Order After Hearing. The divorce was finalized as of August 22, 2005.

8 5. By failing to complete the divorce until August 2005, when the Court
9 terminated the marriage on January 30, 2003, respondent failed to competently
10 perform in wilful violation of Rules of Professional Conduct, rule 3-110(A).

11
12 Case No. 07-O-14039
13 Business and Professions Code, section 6068(l)
 [Failure to Comply with Agreement in Lieu of Discipline]

14 6. Respondent wilfully violated Business and Professions Code, section 6068(l), by
15 failing to keep all agreements made in lieu of disciplinary prosecution with the agency charged
16 with attorney discipline, as follows:

17 7. At all times mentioned, the State Bar of California was the agency charged with
18 attorney discipline in the State of California.

19 8. On or about June 28, 2006, respondent signed a written agreement in lieu of
20 disciplinary prosecution (ALD) to resolve case number 05-O-03488. Respondent also agreed
21 that the ALD would have the following effect:

22 "2. Business and Professions Code section 6068(l) provides that it is
23 the duty of any attorney 'to keep all agreements made in lieu of disciplinary
24 prosecution with the agency charged with attorney discipline.' Any conduct by
25 the Respondent within the effective period of this agreement which violates this
26 agreement may give rise to prosecution for violation of Business and
27 Professions Code section 6068(l) in addition to prosecution for the underlying
28 allegations.

 "3. The facts stipulated to as to the underlying misconduct are
binding upon the Respondent, and the Stipulation as to Facts and Agreement
in Lieu of Discipline, while confidential, may be admitted as evidence without
further foundation at any disciplinary hearing held in conjunction with
Respondent's failure to comply with the conditions of this agreement.

1 "4. Should Respondent comply fully with the terms and conditions of
2 this agreement as specified herein, the matter(s) referenced herein will
3 thereafter be closed by the State Bar and the State Bar agrees that it will be
4 precluded from reopening the referenced matters for any reason other than as
5 stated in this agreement."

6 9. As consideration for this agreement, respondent promised *inter alia* to comply with
7 the following conditions:

8 "STATE BAR ETHICS SCHOOL

9 "Within one year of the date of the execution of this agreement by all parties,
10 Respondent shall attend the State Bar Ethics School, which is held periodically
11 at the State Bar of California (180 Howard Street, San Francisco) and shall take
12 and pass the test given at the end of such session. Because Respondent has
13 agreed to attend State Bar Ethics School as part of this Agreement in Lieu of
14 Discipline, Respondent may receive Minimum Continuing Legal Education
15 credit upon the satisfactory completion of State Bar Ethics School.

16 "Respondent also must report the successful completion of State Bar
17 Ethics School to the Probation Unit, Office of the Chief Trial Counsel, 1149
18 South Hill Drive, Los Angeles, CA 90015 within 10 days of completion.

19 "MCLE

20 "Within one year of the date of execution of this agreement by all parties,
21 Respondent must complete no less than three hours of Minimum Continuing
22 Legal Education ("MCLE") approved in law off [sic, should be "office"]
23 management.

24 "Respondent also must report the completion of these courses to the
25 Probation Unit, Office of the Chief Trial Counsel, 1149 South Hill Drive, Los
26 Angeles, CA 90015 within 10 days of their completion."

27 10. The ALD became effective on or about April 19, 2006 when it was executed by a
28 representative of the Office of the Chief Trial Counsel, and it remained in full force and effect at
all times thereafter. At all times after April 19, 2006, 2006, respondent knew or reasonably
should have known that the ALD had become effective. Respondent received actual knowledge
that the ALD had become effective in or about mid May, 2006.

 11. Respondent violated each of the above-mentioned conditions of his ALD in that he
(1) failed to attend Ethics School during the one year period or at any time thereafter, (2) failed
to report his attendance at Ethics School to the Probation Unit, (3) failed to complete the
required MCLE within the one year deadline or at any time thereafter, and (4) failed to report his
compliance with the MCLE requirement to the Probation Unit within the one year deadline or at

1 any time thereafter. By violating the conditions of his ALD, respondent failed to keep all
2 agreements made in lieu of disciplinary prosecution with the agency charged with attorney
3 discipline.

4 **NOTICE - INACTIVE ENROLLMENT!**

5 **YOU ARE HEREBY FURTHER NOTIFIED THAT IF THE STATE BAR**
6 **COURT FINDS, PURSUANT TO BUSINESS AND PROFESSIONS CODE**
7 **SECTION 6007(c), THAT YOUR CONDUCT POSES A SUBSTANTIAL**
8 **THREAT OF HARM TO THE INTERESTS OF YOUR CLIENTS OR TO**
9 **THE PUBLIC, YOU MAY BE INVOLUNTARILY ENROLLED AS AN**
10 **INACTIVE MEMBER OF THE STATE BAR. YOUR INACTIVE**
11 **ENROLLMENT WOULD BE IN ADDITION TO ANY DISCIPLINE**
12 **RECOMMENDED BY THE COURT. SEE RULE 101(c), RULES OF**
13 **PROCEDURE OF THE STATE BAR OF CALIFORNIA.**

14 **NOTICE - COST ASSESSMENT!**

15 **IN THE EVENT THESE PROCEDURES RESULT IN PUBLIC DISCIPLINE,**
16 **YOU MAY BE SUBJECT TO THE PAYMENT OF COSTS INCURRED BY**
17 **THE STATE BAR IN THE INVESTIGATION, HEARING AND REVIEW OF**
18 **THIS MATTER PURSUANT TO BUSINESS AND PROFESSIONS CODE**
19 **SECTION 6086.10. SEE RULE 280, RULES OF PROCEDURE OF THE**
20 **STATE BAR OF CALIFORNIA.**

21 Respectfully submitted,

22 THE STATE BAR OF CALIFORNIA
23 OFFICE OF THE CHIEF TRIAL COUNSEL

24 By: 

25 Donald R. Steedman
26 Supervising Trial Counsel

27 MARIO J. OROPEZA, No. 182660
28 ASSIGNED DEPUTY TRIAL COUNSEL

Dated: November 19, 2007

1 **DECLARATION OF SERVICE BY CERTIFIED MAIL**
2 **RETURN RECEIPT REQUESTED -7160 3901 9845 1536 0259**

3 **CASE NUMBERS: 04-O-14278 [07-O-14039]**

4 I, the undersigned, over the age of eighteen (18) years, whose business address and place of
5 employment is the State Bar of California, 180 Howard Street, Seventh Floor, San Francisco,
6 California 94105-1639, declare that I am not a party to the within action; that I am readily
7 familiar with the State Bar of California's practice for collection and processing of
8 correspondence for mailing with the United States Postal Service; that in the ordinary course of
9 the State Bar of California's practice, correspondence collected and processed by the State Bar
10 of California would be deposited with the United States Postal Service that same day; that I am
11 aware that on motion of party served, service is presumed invalid if postal cancellation date or
12 postage meter date is more than one day after date of deposit for mailing affidavit. That in
13 accordance with the practice of the State Bar of California for collection and processing of
14 mail, I deposited or placed for collection and mailing in the City and County of San Francisco,
15 on the date shown below, a true copy of the within

16 **NOTICE OF DISCIPLINARY CHARGES**

17 in a sealed envelope placed for collection and mailing as certified mail, return receipt
18 requested, **Article No.: 7160 3901 9845 1536 0259**, at San Francisco, on the date shown
19 below, addressed to:

20 **Frank Epstein**
21 **1519 Tennessee Street**
22 **Vallejo, CA 94590**

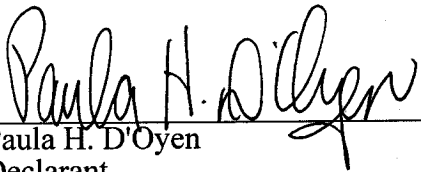
23 in an inter-office mail facility regularly maintained by the State Bar of California addressed to:

24 **N/A**

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is
26 true and correct. Executed at San Francisco, California, on the date shown below.

27 Dated: November 19, 2007

28 Signed: _____


Paula H. D'Oyen
Declarant